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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

FREDERICK TELLEZ,

Defendant and Appellant.

B210234

(Los Angeles County
Super. Ct. No. BA 324346)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Norman J. Shapiro, Judge. Affirmed.

Lynda A. Romero, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Daniel C. Chang and Rama R. Maline, Deputy Attorneys General, for Plaintiff and Respondent.

The People charged Frederick Tellez with sexually abusing his great-nieces. A jury convicted him of three counts of lewd conduct with a child under age 14 and two counts of continuous sexual abuse of a child. Defendant maintains the court erred by admitting irrelevant, prejudicial evidence that he struck his wife and daughter during an argument, that he had refused to enroll the victims in counseling and thwarted the attempts of the victims' father to visit them. We find no basis for reversing the judgment.

FACTS AND PROCEEDINGS BELOW

The victims, A.C. and I.C., were age 14 and 13 respectively at the time of trial. The girls had lived with defendant, his wife and their children since they were three or four years of age.

The evidence showed that defendant had been molesting A.C. since she was in the first or second grade. I.C. testified she could not remember when defendant started molesting her but she recalled telling a friend about it when she was in fifth grade. Defendant admitted "bothering" both girls. In a recorded statement played during trial, he told the police that he rubbed A.C.'s vagina and breasts, "dry humped" her with both their pants pulled down and had her orally copulate and masturbate him. In that statement, he also admitted rubbing I.C.'s vagina, rubbing and kissing her breasts and "dry humping" her two or three times.

A jury convicted defendant of three counts of lewd conduct with a child under age 14, two counts of continuous sexual abuse of a child and found as to all counts that defendant committed the offenses against multiple victims. The court sentenced defendant to 15 years to life on count 1 (lewd conduct with A.C.), a consecutive 2 years (one-third the midterm) on count 3 (also lewd conduct with A.C.) and a consecutive 16 years on count 2 (continuous sexual abuse of A.C.). The court further sentenced defendant to a consecutive term of 16 years on count 4 (continuous sexual abuse of I.C.) and a consecutive term of 2 years (one-third the midterm) on count 5 (lewd act with I.C.). The sentence totals 15 years to life plus 36 years plus various fines and fees.

Defendant filed a timely appeal.

DISCUSSION

I. DEFENDANT’S EVIDENTIARY OBJECTIONS

Defendant maintains that his convictions should be reversed because the court admitted evidence that was either irrelevant or unduly prejudicial. We find no basis for reversal.

A. Background

The court permitted the prosecution to introduce a portion of defendant’s recorded interview with the police in which he admitted that 10 months earlier he had an argument with his wife and daughter in which he struck them both. Defendant told the police that he swung at his daughter, missed, and hit his wife knocking her down. Then, turning to his daughter, he “faked a left, got her with an uppercut right and she went to the floor.”

The court also admitted evidence that before the molestation came to light, the school principal asked defendant to obtain counseling for the girls because they were misbehaving and “acting out” and that defendant refused.

Finally, the girls’ father testified that it was “difficult” for him to visit the girls. Defendant refused to give him their home telephone number, preventing him from making advance arrangements for visits. But if he came to the house unannounced and defendant was not present defendant’s wife would not allow him to see his children. Defendant’s wife often refused to allow him to see his children even if he had a prior arrangement to do so, telling him the girls were “in trouble.”

The court overruled defendant’s objections to this evidence.

B. Admissibility Of The Evidence

The girls told the police that if they resisted defendant’s sexual molestation he would become angry and hit them. Defendant denied that he ever struck either girl. Evidence that defendant struck his wife and daughter in anger supported the girls’ testimony that defendant also struck them in anger and undermined his denial. Specific instances of a defendant’s conduct are not inadmissible under Evidence Code section 1101, subdivision (c) when offered to “support or attack the credibility of a witness.”

Nor was the evidence unduly prejudicial under Evidence Code section 352. It is unlikely that the jury calmly accepted the graphic testimony about defendant's repeated sexual molestation of his young nieces but became outraged over evidence that he once struck his wife and daughter. (Cf. *People v. Ewoldt* (1994) 7 Cal.4th 380, 405 [evidence of uncharged crime not prejudicial where that evidence is less inflammatory than evidence of the charged crime].¹

The evidence that defendant rejected the school's recommendation that he seek counseling for the girls was relevant because such evidence had a logical tendency to show he was afraid that during counseling the girls would disclose his sexual abuse. (Cf. *People v. Wong* (1973) 35 Cal.App.3d 812, 831 [defendant's effort to conceal evidence of homicide probative of his guilt].) Further, there was nothing inflammatory about this evidence.

Likewise, evidence that defendant thwarted the father's visits with the girls by refusing to give the father the girls' telephone number had a tendency in reason to show that defendant wanted to minimize the girls opportunities to disclose to their father defendant's molestation of them.

II. COURT SECURITY FEE

The People contend the court erred by imposing only one \$20 court security fee under Penal Code section 1465.8 instead of a \$20 fee for each of defendant's five convictions as the statute requires. Although the court's order regarding the security fee may be ambiguous, the abstract of judgment correctly reflects a court security fee of \$100.00.

¹ Defendant alludes to the court's failure to instruct the jury that evidence of other crimes cannot be considered as proof of the defendant's bad character or disposition to commit crimes. But the defendant did not request such an instruction and the court is not required to give it sua sponte (*People v. Collie* (1981) 30 Cal.3d 43, 63-64.) In any case, it is not reasonably likely that the jury would have reached a different verdict had they been given the instruction. Hitting his wife and daughter were minor crimes compared to the charges that Tellez sexually molested his nieces and the evidence of his guilt was strong, if not overwhelming.

DISPOSITION

The judgment is affirmed.

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ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

JOHNSON, J.